

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF PUBLIC HEARING ON
2.21.1931, 2.21.1932, 2.21.1933,) PROPOSED AMENDMENT AND
2.21.1934, 2.21.1937, 2.21.1938,) REPEAL
2.21.1939, 2.21.1940, and 2.21.1941)
and the repeal of ARM 2.21.1930)
pertaining to the VEBA plan)

TO: All Concerned Persons

1. On April 9, 2013, at 10:00 a.m., the Department of Administration will hold a public hearing in Suite 115, 100 N. Park Avenue, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Administration no later than 5:00 p.m. on April 2, 2013, to advise us of the nature of the accommodation that you need. Please contact Amber Godbout, Department of Administration, Health Care and Benefits Division, P.O. Box 200130, Helena, Montana 59620-0130; telephone (406) 444-9479; fax (406) 444-0080; TDD (406) 444-1421; or e-mail AGodbout@mt.gov.

3. The rules proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

2.21.1931 POLICY AND OBJECTIVES (1) ~~It is the policy of the~~ The state of Montana ~~to administer~~ a Voluntary Employees Beneficiary Association (VEBA) that allows Montana public employees to access health reimbursement accounts for themselves, their spouses, and their qualified dependents, ~~and their beneficiaries~~, funded by employer contributions and earnings from investment of the contributions. This program ~~shall be~~ is called the Montana VEBA Health Reimbursement Account (HRA).

(2) The Department of Administration shall approve ~~VEBA~~ groups across the state, provide access to the Montana VEBA HRA by eligible contracting employers, and determine the investment vehicles available to members.

(3) The objective of ~~this policy~~ these rules is to establish consistent and cost-effective procedures for establishing and maintaining ~~VEBA~~ groups and account contributions.

AUTH: 2-18-1305, MCA
IMP: 2-18-1302, MCA

STATEMENT OF REASONABLE NECESSITY: As part of its required biennial review of rules, the Department of Administration proposes amending ARM

2.21.1931 to better align the rules with federal statutes, regulations, and rulings and remove redundancy. Specifically, the amounts paid to an employee under the Montana VEBA HRA are not taxed if the plan permits amounts to be paid as qualified medical expenses to an employee's spouse and qualified dependents. However, under IRS Revenue Ruling 2006-36, the amounts paid to an employee under the VEBA plan are taxed if the plan permits amounts to be paid as qualified medical expenses to an individual other than the employee's spouse or qualified dependents. To maintain the Montana VEBA HRA as a tax-free plan, this proposed rule clarifies the language to ensure that the plan is consistent with Revenue Ruling 2006-36. The department considered leaving the rule unchanged but felt that the word "beneficiaries" could be misconstrued to the detriment of the nontax status of the VEBA plan. This clarification approach is consistent with the approach the department has taken with the remaining amendments it proposes in this notice. Given that this area of the law is complex, the department is trying to be as clear and concise as it can be so that these rules may be understood and applied by employees and employers.

Finally, references to "policy" need to be removed to alleviate confusion between administrative rules and state policies.

2.21.1932 DEFINITIONS (1) remains the same.

~~(2) "Department" means the Department of Administration established in 2-15-1001, MCA.~~

(2) "Eligible to retire" means eligible for benefits from the employer's given retirement system.

(3) remains the same.

~~(4) "Employer" means all offices, departments, boards, commissions, institutions, universities, colleges, and any other administrative unit of state government and political subdivision of the state, including a county, an incorporated city or town, or school district.~~

(4) "Group" means a minimum of five employees employed by the same agency and identified as having common characteristics for the purposes of conducting a VEBA election vote.

(5) "HRA" means health reimbursement account. This is a tax-exempt account established for the payment of qualified health care expenses through employer contributions and investment earnings. ~~At any time after a member's account has been established, the member may access funds in the account in a manner prescribed by the department.~~ The funds may be accessed only for the payment of qualified health care expenses, which are defined to include medical plan premiums, and until the funds have been exhausted.

~~(6) "Member" means a current or former employee for whom employer deposits have been received by Montana VEBA HRA and whose account has a positive balance.~~

(6) "Separation from service" or "Separate from service" means the employee retires or otherwise has a termination of employment. The separation from service must be a separation from the employer. If it is a transfer to another agency, VEBA eligibility is based on the new group and its VEBA criteria.

~~(7) "VEBA group" means a collection of employees who are employed by the same employer who elect to form a voluntary employees' beneficiary association. A group may not be considered if the group would not meet requirements for nondiscrimination.~~

~~(8)(7) "VEBA participant" means an a former employee who belongs to a VEBA group enrolled in the Montana VEBA HRA, established under 2-18-1310, MCA for whom employer deposits have been received by the Montana VEBA HRA and whose account has a positive balance.~~

AUTH: 2-18-1305, MCA

IMP: 2-18-1302, MCA

STATEMENT OF REASONABLE NECESSITY: As part of its required biennial review of rules, the department is amending ARM 2.21.1932 to better align the policy with federal statutes, regulations, and rulings, more clearly define terms, and remove redundancy.

The department proposes to add the definition of "eligible to retire" to clarify that group voting opportunities exist that allow only employees who are eligible to retire to participate in a vote, thereby focusing on those members who may be most interested in the benefit.

The department proposes to include the definition of "group" and remove the current definition of "VEBA group" to provide a clearer explanation of what constitutes a group and the required minimum number of members.

In the definition of "HRA," the department proposes to delete the sentence "At any time after a member's account has been established, the member may access funds in the account in a manner prescribed by the department" because this identical sentence is included within 2-18-304(2), MCA. Rules may not unnecessarily repeat statutory language. 2-4-305(2), MCA. The department proposes to keep the last sentence in the HRA definition because, while it closely follows the last sentence in 2-18-304(2), MCA, it clarifies that qualified health care expenses include medical plan premiums. The department believes that this clarification is important because employees have asked whether premiums are covered.

The department proposes to add the definition of "separation from service" to clarify that an employee leaving their job for any reason (e.g., voluntary or involuntary termination) is subject to VEBA contribution requirements. For example, if an employee in a group leaves their state job to work in another state, the employee's designated sick leave cash-out contribution must be placed in the VEBA account and not paid as cash to the terminating employee, unless the group has elected that option. The reason why the department believes this emphasis is important is to avoid any potential issues with individual choice. The department discusses why it is critical to avoid individual choice regarding a VEBA HRA in the reasonable necessity statements explaining the proposed amendments to ARM 2.21.1937 and ARM 2.21.1938.

The terms "department," "employer," and "member" are proposed to be removed because these terms are defined in statute.

2.21.1933 MONTANA VEBA HRA ADMINISTRATION (1) The department shall:

(a) provide educational presentations about the Montana VEBA HRA upon request;

~~(2) The department shall~~

(b) review employer proposals for participation in the Montana VEBA HRA and determine whether the proposed group meets the definition of a group and whether the employer may become a contracting employer;

(c) develop a plan for administration of the Montana VEBA HRA;

(d) enforce the participation requirements by not allowing discriminatory groups to form or by refusing to administer funds from groups that do not continue to comply with the department's requirements; and

(e) determine and process contributions as provided by the department in accordance with IRS tax law restrictions.

~~(3)~~(2) Contracting employers must:

(a) allow educational presentations;

~~(a)~~(b) define groups and enroll eligible members as provided in these rules;

~~(b)~~(c) determine the types of employer contributions to the HRA available to a VEBA group. Allowable employer contributions may include sick leave cash-outs, periodic employer contributions, group salary contributions, percent of raise contributions, unused employee benefit funds, annual vacation leave cash-outs as permitted by state statute, group merit pay, and longevity payments ~~(through collective bargaining only)~~ or other contributions not prohibited by state statute;

~~(c)~~(d) determine whether current employees can become members or whether an employee must terminate employment to become a member; and

~~(d)~~(e) notify the Montana VEBA HRA when an employee a VEBA participant becomes a member; ~~and~~

~~(e) determine and process contributions as provided by the department in accordance with IRS tax law restrictions.~~

~~(4) The department shall enforce the participation requirements by not allowing illegal or discriminatory VEBA groups to form or by refusing to administer funds from VEBA groups that do not continue to comply with the department's requirements.~~

(5) remains the same, but is renumbered (3).

~~(6)~~(4) A member group shall operate in a manner prescribed by the department unless the association is disbanded in a manner prescribed by the department.

(7) through (9) remain the same, but are renumbered (5) through (7).

AUTH: 2-18-1305, MCA

IMP: 2-18-1302, MCA

STATEMENT OF REASONABLE NECESSITY: Some confusion has arisen, particularly at the city and town level, regarding the department's authority to administer VEBA. While the Voluntary Employees' Beneficiary Association Act, 2-18-1301, et seq., MCA, (Act) broadly clothes the department with authority to administer the Act for all statutorily defined "employers," which includes cities,

towns, and school districts, the department's specific duties are not outlined. The department proposes (1)(c), (1)(d), and (1)(e) to explain more clearly the department's responsibilities. Without these clarifications, the department believes that confusion will continue about the department's role in administering the Act.

The department also proposes that the contracting employer must allow educational presentations to the employees. The department believes that employee education is vitally important for employees to understand their options, especially since the VEBA laws and regulations are complex. At times, some employers have been reluctant to allow the department to conduct educational sessions. This proposal makes clear that an employer may not deny its employees educational opportunities offered by the department.

In renumbered (2)(c), the department proposes deleting "(through collective bargaining only)" because statute does not provide for this restriction.

2.21.1934 FEES (1) Contracting employers shall not be charged a fee by the department to establish one or more ~~VEBA~~ groups.

(2) ~~Members shall~~ VEBA participants may be required to pay a monthly administration fees, plus and shall pay a percentage of the monthly HRA administration expenses as determined by the department. The fee ~~will start~~ begins when their accounts are established and continues until the account has a zero balance.

AUTH: 2-18-1305, MCA

IMP: 2-18-1302, MCA

STATEMENT OF REASONABLE NECESSITY: The IRS allows the department to charge administration fees. In the past, the department assessed a \$5 a month fee and a percentage fee. The department has since dropped the \$5 fee and reduced the percentage fee. The proposed language gives the department the ability to reinstate the monthly fee should that become necessary to allow continued administration of the program. Deletion of "VEBA" in (1) and the word "Members" amended to "VEBA participants" are necessary to align with proposed changes in ARM 2.21.1932.

2.21.1937 ELIGIBILITY (1) A ~~VEBA~~ group may be formed voluntarily by:

(1)(a) through (1)(d) remain the same.

(2) A group may consist of employees who are:

(a) all currently eligible to retire;

(b) all currently ineligible to retire; or

(c) a mix of those eligible and ineligible to retire.

~~(2)(3)~~ No VEBA group may be formed that is with fewer than two five employees.

~~(3)(4)~~ No VEBA group may discriminate in favor of highly compensated employees and be formed ~~that is~~ only for the benefit of a select group of the highest paid employees, which means compensation in excess of \$80,000 and in the top 20% of employees ranked on the basis of compensation paid during the year.

(4)(5) Employees who may be excluded from participation without violating the nondiscrimination provisions described in (4) include:

(a) ~~employees with less than three years of service; who are not:~~

(i) eligible for sick leave;

(ii) eligible for benefits with the employer;

(iii) receiving an employer contribution for group benefits under 2-18-703, MCA, or other employer contribution to benefits; and

(iv) active in the employer's retirement system (retirement-eligible-only groups);

(b) seasonal and less-than-half-time employees;

(c) employees covered by a collective bargaining agreement; and

(d) certain nonresident aliens.

(6) When a group has been formed:

(a) members and VEBA participants may not opt out of the group;

(b) current employees or retirees of the same employer not already in the group may not opt into the group; and

(c) if an employee's circumstances change such that the employee becomes eligible to be a member of an existing group, the employee automatically becomes a member of this group.

AUTH: 2-18-1305, MCA

IMP: 2-18-1302, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes the amendments to this rule to clarify language, particularly to include the use of the phrase "highly compensated employees," (HCE) which is the phrase used in the Internal Revenue Code. IRC section 105(h) states that plans may not discriminate in favor of HCEs regarding eligibility or participation or benefits provided under the plan. Generally, the top 25% of paid employees are considered to be HCEs. There are exclusions from consideration for certain groups of employees when applying these nondiscrimination rules for individuals who have not completed three years of service, have not attained age 25, are part-time or seasonal, are nonresident aliens, or are a part of a collective bargaining agreement subject to good faith bargaining.

The employer can define certain groups of employees as eligible as well as exclude certain groups or classifications of employees from participation due to their unique facts and circumstances. Often an employer will restrict participation for groups that could be negatively affected by directing forms of payment into the HRA –payments that would otherwise provide for a higher lifetime retirement or other benefit. However, once defined as eligible/ineligible, all group members occupying the same status must be treated the same.

The department's purpose in identifying particular groups that may be excluded from participation in VEBA is based on the principle that contributions to a VEBA account are from the employer. If an employee is not eligible to receive sick leave or any other employer benefits, then an employer cannot make a contribution to the account.

The department receives questions regarding employee's options once a group is formed. In particular, one question that is regularly asked is if the majority

of the proposed group votes to establish a group, may those employees who voted not to form a group opt out of the group? In general terms, HRA plans must be operated in a uniform design where all group members defined as eligible must participate without any form of individual choice. Individual choice is generally defined as an individual having any ability to affect their treatment under the plan, including opting out of participation.

The IRS rules mandate that employer contributions to an accident or health plan are excludable from an employee's gross income, provided that the employee does not have a choice between nontaxable benefits (e.g., plan contributions) and taxable benefits (e.g., cash, stock, etc.).

An individual is permitted choice between two nontaxable benefits where there is no option for cash or any other taxable benefit. Should an employee have a choice between taxable and nontaxable benefits, all contributions to a plan become taxable to the employee and must be included in gross income for that taxable year. In summary, if the minority of employees who voted against forming a group were allowed to opt out, then the plan would lose its tax-exempt status. Some employees have opined that being included in a group that they did not want to form is unfair. However, given the IRS regulations, the department may not circumvent the opt-out restrictions and still maintain tax-free groups. Losing the tax-exempt status would defeat the whole purpose of having a group. As explained in ARM 2.21.1938(8)(c) below, a vote on whether to maintain the group may be conducted within 12 months from the date the group was formed. The purpose of the 12-month waiting period is to avoid any potential for individual choice.

Finally, the minimum of five employees per group comes from informal IRS guidance regarding minimum group size. Given the IRS's experience and authority concerning VEBA matters, the department believes a minimum of five group members is more appropriate than two.

Deletion of "VEBA" in (1), (3), and (4) is necessary to align with proposed changes in ARM 2.21.1932.

2.21.1938 ELECTIONS (1) remains the same.

(2) An employer may either initiate or facilitate an election to determine whether employees will form a ~~member group for the purpose of participating to~~ participate in the Montana VEBA HRA. When at least 25% of the employees request an election, an employer must facilitate the election within 60 calendar days from the date of the request. Employers shall notify employees of an impending vote at least 15 days prior to the date the vote commences.

(3) The election may include all the employer's employees or a specified group of employees to determine whether those employees will form a group ~~for the purpose of participating in the Montana VEBA HRA.~~

(4) The source of contribution must be agreed upon before a vote is conducted.

~~(4)(5)~~ (5) Employees who are members of a collective bargaining unit may decide to either participate with other employees in the formation of a ~~VEBA~~ group or to initiate the election through the bargaining unit. If the employees decide to participate with other employees, a written memorandum of understanding from the

union representing the bargaining unit employees must be obtained by the employer.

(5) remains the same, but is renumbered (6).

~~(6)(7)~~ If a majority of the employees ~~voting on the question~~ vote to become ~~VEBA participants~~ members, then all of the employees that were eligible to vote on the question, and any employees subsequently hired into the positions covered under the terms and conditions of the election, must be formed as a ~~VEBA group~~ and the employees must become ~~VEBA participants~~ members. If the majority of the employees vote to become members, employees who voted not to participate in the group are still included in the group and may not opt out of the group.

~~(7)(8)~~ Members of a ~~VEBA group~~ may hold an annual election to determine whether or not they will continue their participation in the Montana VEBA HRA if at least 25% of the members of the ~~VEBA group~~ requests an election.

(a) If a majority of eligible members elect to discontinue their participation, their ~~VEBA group~~ is disbanded until another election is conducted; however, the members are not required to wait 12 months from the date of the election to form another group.

(b) Once a ~~VEBA group~~ disbands, an employer shall not make further contributions to ~~members' VEBA participants' accounts until the employer's eligible employees form another group.~~ However, distributions from existing ~~members' VEBA participants' accounts~~ will continue until the funds in the accounts are exhausted.

(c) Once an election is conducted, and a positive vote is cast by a majority, an employer ~~is not required to~~ may not conduct another election for that ~~VEBA group~~ for 12 months from the date of the election.

~~(8)(9)~~ The effective date of the ~~VEBA group~~ must begin no later than 30 days following completion of the vote and announcement of the election outcome which creates the ~~VEBA group~~.

AUTH: 2-18-1305, MCA

IMP: ~~2-18-1302~~, 2-18-1310, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes a minimum notice period of 15 days before an impending vote. The department has discussed this issue with its consultant, and the consultant, based on its experience and industry practice, recommended the 15-day period. The department believes this minimum time period is adequate for employees to become familiar with the issues. Of course, employers may provide a longer notice period.

The department proposes adding (4) because it has learned of confusion among employees about what employer contributions may be included in the employee's account. The department believes that requiring the groups to explicitly agree upon the contribution source(s) before the vote will go a long way toward dissipating the confusion. In addition, this requirement allows for greater control and oversight and restricts an employee from making individual choices, which would defeat the tax-exempt status of the plan.

The department proposes the changes to new (7) and new (8)(c) to clearly explain that an employee in a group may not choose to opt out if a positive vote is

cast by a majority of those who want to become members of a group. As noted in the statement of reasonable necessity for ARM 2.21.1937, allowing an employee to opt out would jeopardize the tax-exempt status of the VEBA plan.

In new (8)(a), the department proposes clarifying that if a group is disbanded, employees do not have to wait 12 months to vote to form another group. The reason why a group must wait 12 months to conduct another vote after a group has been formed is to avoid any potential issue with individual choice. If employees vote to disband, then no issue exists with individual choice, rendering the 12-month waiting period for another vote unnecessary.

Deletion of "VEBA" and revision of the words "Members" and "VEBA participants" are necessary to align with proposed changes in ARM 2.21.1932. The statute implemented by this rule is 2-18-1310, MCA, rather than 2-18-1302, MCA, necessitating the change shown.

2.21.1939 PARTICIPATION (1) and (2) remain the same.

~~(3) At any time after a member's account has been established, the member may access funds in the account in a manner prescribed by the department. The funds may be accessed only for the payment of qualified health care expenses and until the funds have been exhausted.~~

(3) Members may make investment changes on a monthly basis.

AUTH: 2-18-1305, MCA

IMP: 2-18-1302, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes this amendment because the rules were not clear how often an employee could make investment changes. The department believes that allowing changes on a monthly basis gives the employee the flexibility needed to manage the investment of funds. Section (3) is being removed because it unnecessarily repeats statute, which is prohibited by 2-4-305(2), MCA.

2.21.1940 CONTRIBUTIONS (1) Employer contributions into an account, the accumulation of interest or other earnings in an account, and payments from an account for qualified health care expenses are tax-exempt, as provided in ~~45-30-114~~ 15-30-2110, MCA, and under applicable federal laws and regulations to the extent that the plan is qualified under applicable sections of the Internal Revenue Code.

(2) remains the same.

(3) Each participating employer shall provide for a member to annually designate how many hours (if any) of the member's sick leave and/or annual vacation leave balance in excess of 240 hours will be automatically converted to an employer contribution to the member's account each pay period, as provided in 2-18-1311, ~~et seq.~~, MCA. The current state policy designates 0 hours.

(4) Sick leave is considered a contribution source, as approved by the voting entity, and may be converted tax-free for the purposes of a contribution. The rate of sick leave is 25% of the employee's balance at the time of separation. As agreed upon by the voting entity, the sick leave balance of 25% may be divided as listed by the department between VEBA HRA contribution and taxable cash.

~~(4)~~(5) Each participating employer may establish a maximum amount of sick leave hours that may be automatically converted to a an annual contribution. An employer may establish the maximum annual hours at "0" until an employee ~~terminates employment~~ separates from service.

(6) Annual vacation leave is considered a contribution source, as approved by the voting entity, and may be converted tax-free for the purposes of a contribution. The rate of annual vacation leave is 100% of the employee's balance at the time of separation of service.

~~(5)~~(7) Other contributions shall be allowed as outlined in statute, but may not be discriminatory in favoring highly compensated employees. The ~~VEBA~~ group must all participate in any form of approved contributions.

AUTH: 2-18-1305, MCA

IMP: ~~2-18-1302~~, 2-18-1311, MCA

STATEMENT OF REASONABLE NECESSITY: In 2007 the Montana Legislature amended 2-18-1311, MCA, to allow contributions of annual vacation leave to an account in addition to the sick leave contributions. The statute referenced in (1) was renumbered in the 2009 legislative session necessitating this amendment.

The department proposes to add the last sentence in (3) to clarify that the state of Montana has determined that it is not financially possible for the state as a whole to make employer contributions on an annual basis.

New (4) summarizes statutory language found in 2-18-1311, MCA. The department proposes this summary because it regularly fields questions on this issue, and the department is hopeful this summary will simplify for employees sick leave contributions into a VEBA account.

The department proposes the addition of "annual" in (5) to clarify that this conversion is only available on a yearly basis as allowed by statute. Clarifying this matter is again consistent with the approach taken by the department in these rules—being clear without unnecessarily repeating statutory language.

Proposed (6) explicitly recognizes that annual vacation leave may be a contribution source and that 100% of the balance may be converted to an employer contribution. In addition, the statute implemented by this rule is 2-18-1313, MCA, rather than 2-18-1302, MCA, necessitating the change shown.

2.21.1941 BENEFITS IN THE EVENT OF DEATH (1) A member ~~must~~ may designate ~~an individual as a beneficiary~~ a spouse and/or qualified dependent(s) in a manner prescribed by the department.

(2) Upon proof of a ~~member's~~ VEBA participant's death, if the deceased ~~member's~~ VEBA participant's account has a positive account balance, the ~~member's designated beneficiary is entitled~~ VEBA participant's surviving spouse and/or qualified dependent(s) are eligible to use the account for qualified health care expenses.

~~(3) If a deceased member's account has a positive account balance and the member failed to designate a beneficiary or has no surviving designated beneficiary, the account balance will be available to pay qualified health care benefits incurred by~~

the person(s) certified to be the beneficiary by the executor or administrator of the member's estate.

(3) If a deceased VEBA participant's account has a positive account balance, the VEBA participant's surviving spouse, if any, may file claims for eligible medical benefits incurred by the VEBA participant, the surviving spouse, and any other qualified dependents.

(4) If a deceased VEBA participant's account has a positive account balance and dies without a surviving spouse but with qualified dependent(s), the guardian(s) of the dependent(s) may file claims for eligible medical benefits on the dependent(s)' behalf.

(5) At the death of the VEBA participant who has no surviving spouse or qualified dependents, or when the last to die of the VEBA participant and their qualified dependents eligible for medical benefits under the plan dies or is no longer described in IRC 152(a), then the executor or administrator of that person's estate may file claims for any eligible expenses incurred by that person, after which the remaining account balance shall be reallocated on a per capita basis to all Montana VEBA HRA member accounts.

~~(4)(6)~~ In the event if any member's VEBA participant's account shall have ~~has~~ been unclaimed for a period of at least 35 months since the whereabouts or continued existence of the person entitled to the account was last known to the administrator, the member's VEBA participant's account shall become the property of the Montana VEBA HRA.

AUTH: 2-18-1305, MCA

IMP: ~~2-18-1302~~, 2-18-1313, MCA

STATEMENT OF REASONABLE NECESSITY: As discussed in the statement of reasonable necessity for ARM 2.21.1931, IRS Revenue Ruling 2006-36 states that HRA funds may only be used by spouses and qualified dependents upon the VEBA participant's death. The department proposes new (3), (4), and (5) to specifically address what happens to the VEBA participant's account when the VEBA participant dies, consistent with the guidance from Revenue Ruling 2006-36. The department believes it is important to educate employees about these situations so that no confusion will exist when a VEBA participant dies. In addition, the statute implemented by this rule is 2-18-1313, MCA, rather than 2-18-1302, MCA, necessitating the change shown.

4. The department proposes to repeal the following rule:

2.21.1930 SHORT TITLE, found on Administrative Rules of Montana page 2-851.

AUTH: 2-18-1305, MCA

IMP: 2-18-1302, MCA

STATEMENT OF REASONABLE NECESSITY: ARM 2.21.1930 is proposed for repeal to alleviate confusion between administrative rules and state policies.

5. In addition, when this rulemaking is finalized, the department intends to repeal Montana Operations Manual policy "State Government VEBA HRA."

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Amber Godbout, Department of Administration, Health Care and Benefits Division, P.O. Box 200130, Helena, Montana 59620-0130; telephone (406) 444-9479; fax (406) 444-0080; or e-mail AGodbout@mt.gov, and must be received no later than 5:00 p.m., April 12, 2012.

7. Amber Godbout, Attorney, Department of Administration, has been designated to preside over and conduct this hearing.

8. The division maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the mailing list shall make a written request which includes the name and mailing address or e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding Voluntary Employees Beneficiary Association rulemaking actions. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 6 above or may be made by completing a request form at any rules hearing held by the department.

9. An electronic copy of this proposal notice is available through the department's web site at <http://doa.mt.gov/administrativerules.mcp.x>. The department strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that if a discrepancy exists between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

By: /s/ Sheila Hogan
Sheila Hogan, Director
Department of Administration

By: /s/ Michael P. Manion
Michael P. Manion, Rule Reviewer
Department of Administration

Certified to the Secretary of State March 4, 2013.